



Federal Communications Commission
Washington, D.C. 20554

December 27, 2023

DA 23-1208

In Reply Refer to:

1800B3-ARR

Released: December 27, 2023

Omni Broadcasting, LLC
c/o Jennifer F. Hale
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Re: **Omni Broadcasting, LLC**
WTKP(FM), Port St. Joe, Florida
Facility ID No. 67579
Application File Nos. BLH-
19940613KM; 0000087367;
0000212297; BSTA-20210913AAF;
0000124529

Petition for Reconsideration

Dear Petitioner:

In this letter, we deny the Petition for Reconsideration (Petition) filed by Omni Broadcasting, LLC (Omni),¹ which seeks reconsideration of a Media Bureau (Bureau) decision that found that the license for Station WTKP(FM), Port St. Joe, Florida (Station) had expired as a matter of law under section 312(g) of the Communications Act of 1934, as amended (Act), and dismissed the above referenced application for renewal of the Station's license and related pending applications.²

Background. Omni became the licensee of the Station in 2012.³ On November 5, 2015, the Station went silent due to a dispute with the tower owner at the licensed site (Site A) and resumed operation using an alternate site (Site B) pursuant to special temporary authority (STA) the Media Bureau granted December 3, 2015.⁴ The 2015 Engineering STA expired June 1, 2016, and Omni did not file a request to extend it. Consequently, Omni's authorization to operate at Site B expired on June 1, 2016, and its only authorized site reverted to Site A. On August 29, 2016, Omni filed an application for construction permit to operate at its STA site, Site B, which the Bureau granted on July 28, 2017.⁵ Omni never filed a covering license application for this construction permit. Consequently, Omni's authorized site remained Site A. The record does not address where Omni operated from between June 1, 2016, and August 29, 2016, or whether Omni resolved its dispute with its landlord during this time.

¹ Pleading File No. 0000219926 (filed Aug. 25, 2023).

² *Omni Broadcasting, LLC*, Letter Decision, Ref. No. 1800B3-ARR (MB July 26, 2023) (*Letter Decision*); Application File No. 0000087367 (filed Oct. 25, 2019) (Renewal Application).

³ See Application File No. BALH-20120515ACM (filed May 15, 2012) (consummated on July 6, 2012).

⁴ See Application File No. BSTA-20151125ACO (filed Nov. 25, 2015) (2015 Engineering STA).

⁵ See Application File No. BPH-20160829ACO (filed Aug. 29, 2016).

On September 7, 2017, FCC Field inspectors observed the Station operating from an unauthorized location (Site C), approximately 40 miles from the licensed site, Site A, and verified from staff on site that Omni was leasing space on the tower at that location to operate the Station. Omni never sought Commission authorization to operate the Station from Site C.

On October 25, 2019, Omni filed an application for renewal of the license for the Station.⁶ In that application, Omni inaccurately answered “Yes” to certifications that the Station’s operations had not violated the Act or the Commission’s rules (Rules).⁷

On October 13, 2020, Omni filed an application for a construction permit specifying a new community of license and transmitter site (Site D).⁸ On August 12, 2021, Omni requested silent STA, stating that it had lost the temporary Site B, from which it had been operating as of that date.⁹ On September 13, 2021, Omni requested STA to operate from Site D.¹⁰ None of these applications disclosed to the Bureau Omni’s operation at Site C or the FCC field inspectors’ visit to the Station. Because the Bureau remained unaware of Omni’s operation at Site C and the FCC field inspectors’ interactions with the Station, the Bureau routinely processed Omni’s request, and on October 20, 2021, the Bureau granted the STA, expiring August 13, 2022. On August 11, 2022, Omni filed a notice of resumption of operations, stating that it had resumed “operations on the tower authorized by the current license [*i.e.*, Site A].”¹¹ Omni also filed a reduced power notification which stated the Station was operating from its licensed site, Site A.¹² On September 9, 2022, Omni filed an amendment to the 2021 Engineering STA to move from Site D to an alternate location (Site E) at reduced power because the Site A facility was unavailable for long term operations.¹³ On March 9, 2023, Omni filed an application to assign the Station’s license to Divine Word Communications.¹⁴

After the Bureau became aware of the Station’s operational history, the Bureau determined that the Station may have been silent or operating with unauthorized facilities for more than one year, specifically from June 1, 2016 to June 1, 2017. Accordingly, the Bureau issued a Letter of Inquiry (*LOI*) on April 6, 2022,¹⁵ to evaluate whether the Station was silent or operating with unauthorized facilities for more than one year, in violation of section 312(g) of the Act.

Specifically, the Bureau requested: 1) the location, effective radiated power and antenna height above ground level for all periods of operation from June 2, 2016, to the present; 2) copies of all leases, personnel records (including payroll records appropriately redacted to protect the privacy of individual employees), engineering records, and station records, including Emergency Alert System (EAS) logs, and all correspondence (including emails and text messages) relating to the Station since June 2, 2016; 3) invoices, bills, checks written or received, credit card charges, wire transfers or deposits of funds, and

⁶ See Renewal Application.

⁷ Due to our conclusion that the Station’s license has expired, we refrain from any further exploration of the significance of Omni’s certifications in its renewal application.

⁸ See Application File No. 0000124529 (filed Oct. 13, 2020).

⁹ See Application File No. BLSTA-20210812AAG (filed Aug. 12, 2021) (expiring Apr. 18, 2022).

¹⁰ See Application File No. BSTA-20210913AAF (filed Sept. 13, 2021) (2021 Engineering STA).

¹¹ Application File No. 0000197401 (filed Aug. 11, 2022). See also Application File No. BLH-19940613KM.

¹² Application File No. 0000197402 (filed Aug. 11, 2022).

¹³ Application File No. BSTA-20210913AAF (filed Sept. 9, 2022).

¹⁴ Application File No. 0000212297 (filed Mar. 9, 2023) (Assignment Application).

¹⁵ See Letter from Albert Shuldiner, Chief, Audio Division, Media Bureau, FCC, to Omni Broadcasting, LLC (Apr. 6, 2022).

accounting software records relating to the Station's operation since June 2, 2016; and 4) pictures of the Station's studio facilities and transmission facilities since June 2, 2016, and provide exact coordinates for the Station's transmitter site.

On May 16, 2022, Omni submitted a written response to the *LOI* and supporting documentation.¹⁶ Omni also submitted a supplemental response on May 31, 2022.¹⁷ In the *LOI Response*, Omni stated that due to extreme hardship, including the regional economy and natural disasters, it was required to file a series of STAs. Specifically, Omni admitted that: 1) although it made a good faith effort to maintain the Station, at times has not been "within the Standards of Good Engineering Practice;"¹⁸ and 2) administrative mistakes were made, including failure to adhere to legal and technical requirements and to file notifications.¹⁹ Omni also claimed operational delays were due to what it characterized as the Bureau's slow processing of applications during the COVID-19 pandemic, however, Omni failed to identify any specific Commission delay or how any delay impacted its operations.²⁰

In support of its claims, Omni submitted declarations signed under penalty of perjury from Jennifer F. Hale, Managing Member of Omni Broadcasting, LLC, and Jim Turvaville, engineer and consultant, and a declaration from Bryan A. Covey, engineer and consultant. Omni also submitted certain tower lease agreements, engineering invoices, monthly expenses for Omni Broadcasting, LLC, and photographs of destruction at the original licensed site.²¹

In the *Letter Decision*, the Bureau held that the Station failed to operate from an authorized site for at least a "consecutive twelve-month" period, from June 1, 2016, when the 2015 Engineering STA to operate at a temporary facility expired, through June 1, 2017, during which the Station failed to operate from its authorized site for one year, warranting automatic license expiration pursuant to section 312(g) of the Act.²² As a separate and independent basis for dismissing the pending applications, the Bureau found that the *LOI Response* was incomplete because it failed to respond to all the interrogatories or explain why a response was not available.²³ Specifically, Omni's response was incomplete because it contained no submission of EAS logs, no explanation of when the Station operated at Site C, and no copy of the

¹⁶ See *Email from John C. Trent, Attorney, to Victoria McCauley, Attorney, Audio Division, MB, FCC* (May 16, 2022, 17:10, EDT) (*LOI Response*).

¹⁷ See *Email from John C. Trent, Attorney, to Victoria McCauley, Attorney, Audio Division, MB, FCC* (May 31, 2022, 10:34, EDT) (*LOI Response Supplement*).

¹⁸ *LOI Response* at 4.

¹⁹ *Id.*

²⁰ *Id.*

²¹ See generally *LOI Response* and *LOI Response Supplement*.

²² *Letter Decision* at 3-4 (citing *Chinese Voice of Golden City v. FCC*, 2021 WL 6102191 (D.C. Cir. 2021) (affirming that transmissions from an unauthorized location do not constitute "broadcast signals" for purposes of § 312(g)); *Kingdom of God, Inc. v. FCC*, 719 Fed. Appx. 19, 20 (D.C. Cir. 2018) (Mem.) ("Kingdom's transmissions from its unauthorized location in Beech Grove do not constitute 'broadcast signals' for purposes of § 312(g)"); *Roy E. Henderson*, Memorandum Opinion and Order, 33 FCC Rcd 3385, 3385, n.3 (2018) (upholding a section 312(g) finding where the licensee had lost its licensed site and had not obtained authorization to operate at other temporary sites)).

²³ *Letter Decision* at 4 (citing 47 CFR §§ 73.3566(b) ("If an applicant is requested by the FCC to file any additional documents or information not included in the prescribed application form, a failure to comply with such request will be deemed to render the application defective, and such application will be dismissed."), 73.3568(a) ("... failure to respond to official correspondence or request for additional information, will be cause for dismissal."), and *LPFM MX Group* 37, Memorandum Opinion and Order, 31 FCC Rcd 7512, 7517, para. 12 (2016) (dismissing application for failure to respond to letter of inquiry)).

tower lease agreement for Site C. The *Letter Decision* also dismissed the Renewal Application, the Assignment Application, and all other pending applications related to the Station, as moot.

In the Petition, Omni argues that: 1) its failure to provide certain documentation requested by the *LOI*, or an explanation why they were omitted, is not grounds for dismissal of its Renewal Application;²⁴ 2) absence of EAS logs has no bearing on the Station's operational status because its multiple station relay panel does not log individual station activity;²⁵ 3) Site C is only a few miles from the licensed site, and operation at Site C from August 25, 2016 through September 13, 2017, was due to loss of the licensed site;²⁶ 4) operation from Site C could have been licensed under STA, if requested;²⁷ 5) Omni operated from the unauthorized location in order to keep the Station on the air;²⁸ 6) Omni is unable to afford full-time engineering staff or legal counsel, which led to its unauthorized operation;²⁹ 7) the Bureau's grant of STA applications after the June 1, 2017 expiration date impacted expiration of the license;³⁰ 8) the Bureau should have imposed a monetary forfeiture for Omni's unauthorized operation, as it did in a recent unrelated case involving KEUC(FM), rather than cancelling the Station license and dismissing the Renewal Application;³¹ and 9) dismissal of the Renewal Application is counter to the Commission's policy to support minority-owned stations.³²

Discussion. The Commission will consider a petition for reconsideration only when the petitioner shows either a material error in the Commission's original order or raises additional facts not known or existing at the time of the petitioner's last opportunity to present such matters.³³ Section 312(g) of the Act, provides that the Commission may extend or reinstate a station license that expired pursuant to section 312(g) to promote equity and fairness.³⁴ Omni has not demonstrated any legal error in the *Letter Decision*, nor has it cited any precedent that warrants reinstatement.

The *Letter Decision* correctly concluded that Omni had operated from an unauthorized location for more than twelve months resulting in expiration of the license. In the Petition, Omni admits that it operated from the unauthorized Site C location for over one year – “[t]he operation of WTKP from ‘Site C’ . . . commenced on or about August 25, 2016 and continued until September 13, 2017.”³⁵ Omni also acknowledges that it failed to seek STA to operate from Site C.³⁶ Our analysis need not go any further.

²⁴ Petition at 1.

²⁵ *Id.* at 2.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* at 2-3.

²⁹ *Id.* at 3.

³⁰ *Id.*

³¹ *Id.* at 4; see also *Oklahoma City Broad., Inc.*, Order and Consent Decree, DA 23-663 (MB Aug. 7, 2023) (*Oklahoma City Consent Decree*).

³² *Id.*

³³ See 47 CFR § 1.106(c), (d); see also *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964).

³⁴ 47 U.S.C. § 312(g); see also *Eagle Broad. Group, Ltd. v. FCC*, 563 F.3d 543, 545 (D.C. Cir. 2009) (*Eagle*).

³⁵ Petition at 2.

³⁶ *Id.* at 2-3.

The Commission has consistently applied section 312(g) to cancel licenses when the station has operated from an unauthorized site for more than 12 months.³⁷

We are not persuaded by Omni's attempts to excuse its actions. Although section 312(g) grants the Commission authority to reinstate expired licenses "to promote equity and fairness,"³⁸ the Commission only exercises that discretion in cases where the silence or unauthorized operation has been outside the control of the licensee.³⁹ Omni has failed to provide any evidence that its operation at Site C was due to factors beyond its control. Omni's claim that its unauthorized operation could have been authorized via STA is unpersuasive because Omni never sought such authorization. Omni's claim that Site C is only a few miles from the licensed site is also unpersuasive, since it was still not an authorized location.⁴⁰ As the Commission found in *Chinese Voice of Golden City*, section 312(g) applies to unauthorized operation even when the licensee has characterized the distance between the authorized and actual sites as *de minimis*. Finally, Omni's claims that it merely sought to keep the Station operating does not excuse unauthorized operations, and this argument is undermined by the fact that the Station was subsequently silent for another 12 month period from October 2018 to October 2019.⁴¹

Omni's lack of legal counsel does not excuse its failure to comply with the Commission's Rules and most notably the requirement to seek an STA for a new operating location. Applicants are solely responsible for complying with the Rules, regardless of whether they are represented by counsel,⁴² and

³⁷ *Eagle Broadcasting*, 23 FCC Rcd at 592, para. 9 (unauthorized, unlicensed broadcasts cannot constitute transmission of broadcast signals to avoid license expiration under section 312(g)). *Absolute Broad. LLC*, Memorandum Opinion and Order, FCC-23-38 at 8, para. 18 (2023) (unauthorized operation is no better than silence for purposes of section 312(g)); *A-O Broadcasting*, 23 FCC Rcd 603, 608, para.10 (2008) (transmission from unauthorized location is not sufficient to avoid the consequences of section 312(g)); *Int'l Aerospace Sols., Inc.*, Memorandum Opinion and Order, FCC 23-8, para. 9 (2023) (upholding Bureau's determination that the station licenses expired pursuant to section 312(g) due to combined silence and operation from an unauthorized site).

³⁸ 47 C.F.R. § 312(g).

³⁹ See *V.I. Stereo Commc'ns Corp.*, Memorandum Opinion and Order, 21 FCC Rcd 14259 (2006) (finding reinstatement of a 312(g)-cancelled license appropriate for a station that sustained damage from three hurricanes where original facilities were destroyed and the rebuilt facility also sustained damage); *Community Bible Church*, Letter Order, 23 FCC Rcd 15012, 15014 (MB 2008) (reinstatement warranted where licensee took all steps needed to return to air, but remained off air to promote air safety after discovering and reporting that FCC and FAA records contained incorrect tower information); *Sumiton Broadcasting Company, Inc.*, Letter Order, 22 FCC Rcd 6578, 6580 (MB 2007) (reinstating license where silence necessitated by licensee's compliance with court order); *Universal Broadcasting of New York, Inc.*, 34 FCC Rcd 10319 (MB 2019) (finding that station's inability to file an STA to resume service due to a federal government shutdown was a compelling circumstance under section 312(g)).

⁴⁰ See *Chinese Voice of Golden City*, Memorandum Opinion and Order, 35 FCC Rcd 567, 570, para. 11 (2020) (rejecting argument that operating from incorrect site that was 256 feet from authorized site was a *de minimis* and did not trigger automatic expiration under section 312(g)); *Shelby Broadcast Associates, LLC*, Letter Decision, 34 FCC Rcd 6202, 6203-4 (MB 2019) (cancelling station's license after operating an unauthorized site at a greater distance than the three-second "tolerance zone" of 47 CFR § 73.1690(b)(2)); *Powell Meredith Communications Co.*, Letter Order, 37 FCC Rcd 15044 (MB 2022) (affirming rescission of license where the station was built only 30 yards from the authorized location).

⁴¹ See *Silent Notification* (filed Oct. 30 2018). Licensee did not file a request for silent STA even though it was required to do so after 30 days of silence. 47 CFR 73.1740(a)(4). License claimed that the Station was silent from October 10, 2018, until October 5, 2019, when it resumed operations "at the license tower site [Site A]." Resumption Notice (filed Oct. 16, 2019). However, in the 2015 Engineering STA, License also claimed that it lost access to Site A. Omni offers no explanation for this discrepancy.

⁴² See *Burlington Cablevision, Inc.*, Order on Reconsideration, 13 FCC Rcd 772, 779, para. 18 (1998).

Bureau staff is not required to take into consideration whether an applicant is assisted by counsel.⁴³ Moreover, the Commission has held that applicants that decline to hire counsel assume the burden of complying with the Rules,⁴⁴ and cannot be allowed to disavow their decision after an unfavorable result.⁴⁵

We reject Omni's claim that the Bureau's grant of STAs after June 1, 2017, has any bearing on the Station's expiration under section 312(g). Under section 312(g), the Station license had already expired automatically, absent any Bureau action, on June 1, 2017. The Bureau's grant of STAs had no effect—and could not have had an effect—on the earlier statutory expiration of the Station's license. Bureau staff issued the STAs to allow temporary operations on a going forward basis, for a limited period. The STAs did not address whether the Station's license expired under section 312(g), nor did they reinstate or extend the Station's license term. Accordingly, Bureau staff's grant of STAs after June 1, 2017, did not have any effect on the Station's license expiration.⁴⁶

Omni's argument that its unauthorized operation was a minor infraction for which the Bureau should have assessed a monetary forfeiture is also unavailing.⁴⁷ Omni cites the recent *Oklahoma City Consent Decree* regarding station KEUC(FM), in which the Bureau entered into a consent decree imposing a monetary forfeiture and compliance plan, where a station failed to notify the Bureau that it was silent for a period of roughly eleven months.⁴⁸ Omni's reliance on this case is inapposite, because unlike KEUC(FM), WTKP operated from an unauthorized location for *more than* twelve consecutive months, which warrants automatic license expiration under section 312(g).⁴⁹

The *Letter Decision* also correctly found that Omni's failure to fully respond to the LOI was an appropriate reason to dismiss the Renewal Application. Omni acknowledges that it failed to respond to all of the LOI interrogatories, or explain why a response was not available.⁵⁰ We reject Omni's argument that this failure to respond to the LOI is not grounds for dismissal of its Renewal Application. It is well settled that the failure to respond to Commission interrogatories is grounds for the dismissal of an application pending before the Commission.⁵¹

⁴³ See *Salzer v. FCC*, 778 F.2d 869, 875 n.27 (D.C. Cir. 1985) (“we do not rely on the fortuity that [the applicants] filed their applications without assistance of counsel; the FCC need not take this circumstance into consideration.”).

⁴⁴ See *United Broadcasting Co.*, 93 FCC 2d 482, 487, para. 12 (1983) (“[w]here, as here, a party elects to proceed *pro se*, it must assume the burden of becoming familiar with Commission Rules and conforming to Rule requirements.”)

⁴⁵ See *Enterprise Broadcasting, Inc.*, Memorandum Opinion and Order, 60 FCC 2d 852, 857, para. 14 (1976).

⁴⁶ See *Inca Communications, Inc.*, Letter Order, 31 FCC Rcd 7087, 7090 (MB 2016) (*Inca*) (“irrespective of whether the staff had acted on the Second STA Request, its license would still have expired on exactly the same date because the staff's grant of STA does not supersede the automatic cancellation provision of Section 312(g)”; *Universal Broadcasting of New York, Inc.*, Memorandum Opinion and Order, 34 FCC Rcd 10319, 10321, para. 7 (MB 2019) (holding that grant of STA after a 12-month silence period did not implicitly reinstate or extend license term).

⁴⁷ Petition at 4.

⁴⁸ See *Oklahoma City Consent Decree*.

⁴⁹ 47 U.S.C. § 312(g); *Eagle Broad. Group, Ltd.*, Memorandum Opinion and Order, 23 FCC Rcd 588, 592, para. 9 (2008), *aff'd by Eagle*, 563 F.3d 543; *Absolute* at 8, para. 18.

⁵⁰ Petition at 1-2.

⁵¹ See note 21 *supra*. See also *Warren L. Percival*, Order of Revocation, 8 FCC 2d 333, 333-34, para. 4 (1967) (withholding information from the Commission “frustrates the Commission of the performance of its duty. In such event, denial or revocation of a license where such information is not furnished may be warranted on this ground alone, since it is the licensee who deprives the Commission of information necessary to determine its compliance with the public interest standard.”). Here, for example, Omni failed to respond to provide information concerning its

Lastly, while the Commission has promoted minority and female ownership, minority status alone does not warrant reinstatement under the equity and fairness provision of section 312(g).⁵²

Omni has not demonstrated any legal error to justify reversing the *Letter Decision*, and the Bureau's conclusion in the *Letter Decision* that Omni's license expired pursuant to section 312(g) is consistent with long-standing Commission precedent. Moreover, Omni has failed to demonstrate that it experienced any circumstances that would warrant the exercise of discretion under the "equity and fairness" provision of section 312(g). Accordingly, we deny the Petition.

Conclusion. For the reasons set forth above, **IT IS ORDERED** that the Petition for Reconsideration filed by Omni Broadcasting, LLC, on August 25, 2023 (Pleading File No. 0000219926), IS DENIED.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

operations in October of 2019, where it claimed to have lost access to Site A, and then subsequently claimed to have resumed operations at Site A.

⁵² See, e.g. *Inca*, 31 FCC Rcd at 7090 ("while the Commission strongly encourages minorities to become broadcast licensees, we find no basis in the statute or its legislative history to apply a more lenient reinstatement standard for minority-owned broadcast stations.").